

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the March 2, 2009 Task Force Meeting
DATE: March 3, 2009

Participants

The following people participated in the Task Force meeting:

Task Force Members

Harvey Hackett	Bitterroot Ted Williams Flathead Lakers
Caryn Miske	Flathead Basin Commission
Marc Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Jim Elliott	Lower Clark Fork
Fred Lurie	Blackfoot Challenge
Ted Williams	Flathead Lakers
Gail Patton	Sanders County Commissioner

Public

Dr. David Shively	UM Department of Geography
Joel Brown	UM Department of Geography
Mark Reller	Bonneville Power Administration (BPA)

Staff:

Gerald Mueller	Consensus Associates
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Meeting Agenda

- February 2, 2009 Meeting Summary
- Updates
 - Task Force funding
 - Hungry Horse water contracting activity
 - FY 2009 Conference Planning
- 2009 Water Legislation
- Public Comment
- Next Meeting

February 2, 2009 Meeting Summary

The Task Force made no change to the February 2, 2009 meeting summary.

Updates

Task Force Funding - No change in the status of Task Force funding for the 2010-2011 biennium has occurred since the last meeting. The House Appropriations Committee has not taken action on HB 201 or on the recommendations from the Joint Appropriations Subcommittee on Natural Resources and Transportation.

Hungry Horse Water Contracting Activity - Gerald Mueller passed out a copy of his February 17, 2009 letter to Wendy Christensen of the Bureau of Reclamation (BOR) with the Task Force's questions regarding the cost allocation study for Hungry Horse. See Appendix 1. Ms.

Christensen has responded by email that she intends to answer the letter within two weeks. Mr. Mueller has also been in contact with Tim Bryggman. In an email message, Mr. Bryggman stated that Ms. Christensen has informed him that a write-up of the rationale for BOR's proceeding with the Cost Reallocation Analysis is being reviewed by the Boise office and she hopes to provide it to DNRC soon. Leslie Stillwater is working on modeling for the compact. DNRC will seek clarification of the relationship of this modeling with the Hungry Horse contracting effort. As Ann Schwend reported at the January Task Force meeting, the Water Resources Division is submitting a letter of interest for BOR's Water for America Basin Study Program seeking assistance in accomplishing some of the tasks of the Hungry Horse contracting process. DNRC hopes to learn more about the prospects for this program in stretching the appropriation for Hungry Horse.

FY 2009 Conference Planning - Gerald Mueller and Dr. David Shively reported on this topic. Dr. Shively and Ann Schwend continue working on a draft contract between the University of Montana Department of Geography and the DNRC for the May 6, 2009 Watershed Roundtable and the June 8- 9, 2009 Conjunctive Management Conference. These two departments have not yet decided what financial support can be offered to those who attend the Roundtable. As previously reported, the basin's watershed groups have been contacted and the active groups have agreed to participate. A draft invitation letter that will be sent to entities that participate in watershed group activities including conservation districts, non-governmental organizations, and local, state, and federal government agencies has been drafted and will be mailed as soon as DNRC and the UM have decided what financial support decision has been made. The Task Force's Conference Planning Committee has begun contacting speakers for the Conjunctive Management Conference.

Comment - Two topics that we may want to bring up at the Roundtable are wetlands and water storage.

Question - What are we hoping to accomplish through the Roundtable?

Answer by Dr. Shively - The draft contract scope of work includes the following under the scope of work:

The Roundtable will engage representatives of watershed organizations working in the Basin, including watershed groups and councils, conservation districts, water-related nongovernmental organizations, tribal and local governments, and state agencies in a dialog that:

- Allows them to share information about current water management activities and research as well as plans for both;
- Identifies common issues and concerns;
- Identifies opportunities for greater collaboration between the organizations.

2009 Water Legislation

Gerald Mueller passed out the summary of the status of the introduced water bills from the legislative web site. See Appendix 2. Highlights of the bills follow discussed by the Task Force follow.

- HB 25 - This bill, which would have created an exemption from water right permits for the Montana Department of Transportation for its wetland mitigation work died in the House Natural Resources Committee (HNRC).
- HB 39 - This is a Water Policy Interim Committee (WPIC) bill addressing aspects of water right enforcement, including authorizing the Attorney General to bring suit to enjoin the

waste, unlawful use, interference, or violation without being requested to do so by DNRC. This bill has passed the House and is scheduled for a hearing in the Senate Natural Resources Committee (SNRC) on March 6, 2009.

- HB 40 - This bill modifies the DNRC water right permitting process. It passed the House and was transmitted to the Senate. It is also scheduled for a hearing in the SNRC on March 6, 2009.
- HB 52 - This bill provides \$4.2 million to the Montana Bureau of Mines and Geology for conducting ground water studies in seven subbasins experiencing rapid growth. The Appropriations Committee has not yet acted on it.
- HB 275 - This bill would authorized the DNRC to declare the need for an emergency streamflow and curtail water use to maintain up to 25% of the average annual flow of record on gauged streams. It died in HNRC.
- SB 17 - This bill would have required a public water and sewer system for subdivisions with 30 or more lots with an average lot size of less than 3 acres. It died in the Senate Local Government Committee.
- SB8 - This bill authorizes regional entities to own property, exercise eminent domain, levy taxes, and issue revenue bonds to acquire and fund projects and exercise other authorities to provide for collaboration and coordination in the management of water resources for agricultural and recreational uses. This bill passed the Senate and is scheduled for a hearing in the House Local Government Committee on March 10.
- SB 22 - This bill creates a permanent, independent legislative committee to address water policy issues. It passed the Senate on 2nd reading 44-6 and is awaiting action by the Senate Finance and Claims Committee.
- SB 39 - This bill, which extends the life of the Reserved Water Rights Compact Commission by four years, has been signed into law by the governor.
- SB93 - This bill would have changed the requirements for a mitigation plan for a new groundwater permit in a basin closed to new surface water rights from an adverse affect to a net depletion. This bill died in the SNRC.
- SB94 - This bill removes some of the application requirements in statute for a ground water permit in a basin closed to new surface water rights. It passed Senate and has been transmitted to the House.
- SB120 - This bill revises the process for petitioning for a controlled ground water area, increasing the number of water right holders that must sign a petition and increasing the role of local governments in the petition process. This bill passed the Senate and is scheduled for a hearing before the HNRC on March 4, 2009.
- SB200 - This bill restricts the use of domestic cleaning products containing phosphorus in basins for which the Montana Department of Environmental Quality has adopted numerical nutrient water quality standards. The following cleaning agents and other products containing phosphorus are exempt from the bill: those used in food or beverage processing; those used by health care services and facilities, those used by institutional or commercial establishments, those used for industrial processes, and those used for agricultural operations. It passed the Senate and has been transmitted to the House.
- SB303 - This bill requires DNRC to develop sections of the State Water Plan to address various water issues within the Clark Fork, Flathead, Missouri, and Yellowstone river basins and to create water user councils to advise it in each of these basins. This bill passed the Senate on second reading and will be heard by the Senate Finance and Claims Committee at a hearing on March 9. Mr. Mueller passed out amendments to the bill that would remove separate references in the bill to the Flathead basin, including a separate council for the Flathead, and clarify that for the Clark Fork basin DNRC shall continue to utilize the Clark

Fork River Task Force established pursuant to 85-2-350. The amendments are included below in Appendix 3.

- SB 343 - This bill authorize the state to control aquatic invasive species, including eurasian watermilfoil, the quagga mussel, and the zebra mussel. It passed the Senate on second reading and will have a hearing in the Senate Finance and Claims Committee on March 6, 2009. As introduced, this bill would have addressed both aquatic and terrestrial invasive species, but reference to terrestrial species was removed by amendment.
- SB396 - This bill exempts changes to the point of diversion from the DNRC change process under certain conditions. It passed the Senate and has been referred to the HNRC.
- SB437 - This bill clarifies that a body of water supplied with an appropriation of ground water from a source exempt from water rights permitting is exempt from the DNRC permit process. It passed the Senate and has been referred to the House Fish, Wildlife and Parks Committee.
- SB461 - This bill was introduced at the request of the Mountain Water Company and would have provided an exemption from change of use permits for municipal water rights under certain conditions. This bill failed on second reading in the Senate.

Task Force Action - Those members of the Task Force present at this meeting agreed to continue to support SB 343 and Caryn Miske was authorized to speak on this bill on behalf of the Task Force. Subject to confirmation with the organization they represent, the members present also agreed to support SB303 with the amendments drafted by Mr. Mueller. Mr. Mueller was asked to draft and present testimony in support of the amended SB303 to Senate Finance and Claims. Mr. Mueller will circulate a draft of his testimony to Task Force members for their review and comment.

Next Meeting

The next meeting is scheduled for 9:30 a.m. on Monday, April 6, 2009 at a location in Missoula to be announced. Topics for the next meeting will include:

- The policy of the United States Forest Service for managing water on its lands;
- The status of implementation of the USFS water reservations; and
- DNRC's approach to change of use permits, and specifically, its interpretation of the amount of water historically consumed when considering such permits.

Appendix 1
Clark Fork River Basin Task Force
C/O Gerald Mueller
440 Evans
Missoula, MT 59801
(406)543-0026

February 17, 2009

Wendy Christensen
Technical Projects Officer
Upper Columbia Area Office
US Department of Interior
Bureau of Reclamation

Dear Ms. Christensen:

At its last meeting, members of the Clark Fork River Basin charged me with sending you the following questions on their behalf. They are aimed at a better understanding of the cost allocation study for Hungry Horse.

1. Will the cost allocation study determine if 100,000 acre feet are available in Hungry Horse reservoir for the contract with the state?
2. If the cost allocation will not determine whether this amount is available for contracting, what process will be used to do so, and when will that process be completed?
3. Is the analysis of future water needs in the Clark Fork basin that DNRC has provided adequate for cost reallocation study? If it is not, what additional information is needed?
4. We understand that recreation is not now a purpose assigned to recover Hungry Horse project costs. Will it be assigned costs in the current study?
5. Are recreation costs reimbursable? If they are, who would pay them?
6. Our understanding is that the cost of Hungry Horse operation to provide flows for threatened or endangered salmon species will not be included in the cost reallocation study because endangered species mitigation is a biological and not an economic issue. Is this correct?
7. Will any endangered species mitigation measures be included in the Hungry Horse cost reallocation studies? If some will be, what measures are they?
8. Are endangered species mitigation costs reimbursable?
9. Will project costs, such as the cost of the temperature withdrawal structure, be assigned to the fishery?
10. If the fishery is assigned project costs, will they be reimbursable, and who will pay them?

Wendy Christensen
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11. Our understanding is that the contract water price that the state would pay for the water will not be set by the cost allocation study; rather, it will be set through a negotiation between the Bureau and the state after the cost reallocation study is finished and approved by the Congress. Is this correct?

12. Are hydrologic modeling studies to provide inputs to the cost allocation study underway, and when will they be available for public review and comment?

13. We understand that additional consumptive use of water stored in Hungry Horse reservoir by the Confederated Salish and Kootenai Tribes will not be considered in the cost reallocation study. Is this correct?

We appreciate your willingness to engage the Task Force as you conduct your work on the State of Montana's Hungry Horse contract request.

Sincerely,

Gerald Mueller
Task Force Facilitator

Appendix 2 Introduced Bills Matching the Search Criteria

* after status indicates the bill is *probably* dead
Total number of Introduced Bills - 53

Bill Type - Number	LC Number	Primary Sponsor	Status	Status Date	Short Title
HB11	LC0174	Jon C Sesso	(H) Hearing -- (H) Joint Appropriations Subcommittee on Long-Range Planning	01/16/2009; 8:00 AM, Rm 350	Treasure state endowment appropriations
HB25	LC0432	Bill McChesney	(H) Tabled in Committee* -- (H) Natural Resources	02/06/2009	Department of Transportation water rights for wetland projects
HB26	LC0547	Ken Peterson	(H) Tabled in Committee* -- (H) Fish, Wildlife and Parks	01/20/2009	Revise stream access at bridges
HB39	LC0428	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water right enforcement laws
HB40	LC0430	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water right permit process
HB41	LC0433	Jill Cohenour	(S) Hearing -- (S) Natural Resources	03/06/2009; 3:00 PM, Rm 422	Revise water quality laws for aquifer recharge or mitigation
HB52	LC0431	Walter McNutt	(H) Hearing -- (H) Appropriations	01/12/2009; 3:00 PM, Rm 102	Fund hydrogeologic study
HB135	LC0275	Tony Belcourt	(H) Hearing -- (H) Appropriations	02/03/2009; 3:00 PM, Rm 102	Revise laws implementing the Fort Belknap-Montana Water Rights Compact

HB161	LC0276	Shannon Augare	(H) Hearing -- (H) Appropriations	03/03/2009; 3:00 PM, Rm 102	Establish the Blackfeet-Montana Water Compact
HB181	LC1960	Ken Peterson	(S) Hearing -- (S) Local Government	03/04/2009; 3:00 PM, Rm 405	Authorize design-build water and sewer districts
HB190	LC0959	Kendall Van Dyk	(S) Hearing -- (S) Fish and Game	03/19/2009; 3:00 PM, Rm 422	Clarify bridge access law
HB201	LC1870	Janna Taylor	(H) Hearing -- (H) Appropriations	01/21/2009; 3:00 PM, Rm 102	Fund Clark Fork River Basin Task Force
HB236	LC1054	Deborah Kottel	(H) Tabled in Committee* -- (H) Judiciary	02/04/2009	Require landlord to test private water source for fecal and E coli
HB275	LC0191	Robin Hamilton	(H) Tabled in Committee* -- (H) Natural Resources	02/06/2009	Emergency streamflow for fisheries
HB285	LC1053	Michele Reinhart	(S) Hearing -- (S) Natural Resources	03/09/2009; 3:00 PM, Rm 422	Authorize use of gray water in commercial and multifamily structures
HB379	LC2110	Gordon R Hendrick	(H) Tabled in Committee* -- (H) Natural Resources	02/20/2009	Revise water law for changes
HB430	LC1335	Anders Blewett	(H) Hearing -- (H) Fish, Wildlife and Parks	03/05/2009; 3:00 PM, Rm 152	Fine for barbwire fences across navigable water
HB455	LC1032	Michele Reinhart	(H) Hearing -- (H) Local Government	02/19/2009; 3:00 PM, Rm 172	Big sky rivers act
HB470	LC0812	Jill Cohenour	(H) Tabled in Committee* -- (H) Judiciary	02/17/2009	Clarify court cost awards for water proceedings

HB505	LC1239	Michele Reinhart	(H) Tabled in Committee* -- (H) Local Government	02/18/2009	Revise lake shore laws
HB557	LC2131	Tony Belcourt	(H) Transmitted to Senate	02/25/2009	Generally revise laws related to regional water systems
HB575	LC1549	Bill McChesney	(H) Committee Vote Failed; Remains in Committee -- (H) Agriculture	02/20/2009	Revise water laws relating to coal bed methane
HB632	LC2317	Galen Hollenbaugh	(H) Referred to Committee -- (H) Appropriations	02/19/2009	Transfer funds for water adjudication
SB4	LC0391	David E Wanzenried	(S) Tabled in Committee* -- (S) Natural Resources	01/13/2009	Create standing water policy subcommittee of EQC
SB6	LC0142	Ron Erickson	(S) Tabled in Committee* -- (S) Local Government	01/20/2009	Revise public water supply fee law
SB8	LC0192	Ken (Kim) Hansen	(H) Hearing -- (H) Local Government	03/10/2009; 3:00 PM, Rm 172	Authorize regional water entities
SB17	LC0429	Gary L Perry	(S) Tabled in Committee* -- (S) Local Government	01/23/2009	Require public water and sewer systems for certain subdivisions
SB22	LC0392	Terry Murphy	(S) Hearing -- (S) Finance and Claims	01/29/2009; 5:00 PM, Rm 317A	Create Water policy committee
SB39	LC0057	Carol C Juneau	(S) Signed by Governor	02/25/2009	Extend duration of reserved water rights compact commission

SB93	LC0286	Larry Jent	(S) Tabled in Committee* -- (S) Natural Resources	02/10/2009	Clarify groundwater utilization laws in closed basins
SB94	LC0288	Larry Jent	(S) Scheduled for 2nd Reading	02/25/2009	Revise closed water basin permitting laws
SB95	LC0289	John Brueggeman	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Temporary nutrient criteria for discharge permits
SB101	LC0404	John Brueggeman	(S) Tabled in Committee* -- (S) Natural Resources	02/06/2009	Certification for wastewater collection system operators
SB102	LC0403	John Brueggeman	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise public water supply laws
SB120	LC0287	Ryan Zinke	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise the controlled groundwater area petition laws
SB149	LC0285	John Brueggeman	(S) Tabled in Committee* -- (S) Natural Resources	02/03/2009	Change of use for municipal or county water and sewer districts
SB200	LC0662	Ron Erickson	(S) 2nd Reading Passed as Amended	02/24/2009	Restrict phosphorous cleaning products in certain areas
SB201	LC1925	Jesse Laslovich	(H) Hearing -- (H) Natural Resources	03/04/2009; 3:00 PM, Rm 472	Revise Crow Tribe water compact to allow change in use of escrow account

SB262	LC1256	David E Wanzenried	(H) Hearing -- (H) Local Government	03/05/2009; 3:00 PM, Rm 172	Allow per unit assessment in water and sewer districts
SB303	LC0463	David E Wanzenried	(S) Rereferred to Committee -- (S) Finance and Claims	02/21/2009	Update state water plan
SB314	LC0373	Rick Laible	(S) Bill Not Heard at Sponsor's Request -- (S) Natural Resources	02/14/2009	Clarify definitions for stream access laws--define natural, natural water body
SB324	LC0190	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Revise laws related to power generation water rights
SB396	LC1949	Bob Story	(H) Referred to Committee -- (H) Natural Resources	02/24/2009	Alter criteria for permitting certain changes to points of diversion
SB407	LC1168	Rick Ripley	(S) 2nd Reading Passed as Amended	02/24/2009	Revise district court confirmation of federal water contracts
SB420	LC0188	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Challenge of certain water rights during adjudication
SB421	LC0186	Verdell Jackson	(S) Bill Not Heard at Sponsor's Request -- (S) Natural Resources	02/18/2009	Clarify adverse affect in water law
SB422	LC0187	Verdell Jackson	(S) Tabled in Committee* -- (S) Natural Resources	02/21/2009	Generally revise water use act

SB426	LC1926	Jesse Laslovich	(S) Scheduled for 3rd Reading	02/25/2009	National bison range water compact
SB437	LC1684	Gary L Perry	(H) Referred to Committee -- (H) Fish, Wildlife and Parks	02/21/2009	Clarify fish pond licensure
SB440	LC0032	Kelly Gebhardt	(S) Scheduled for 3rd Reading	02/25/2009	Exempt air quality permits from MEPA review
SB461	LC0160	John Brueggeman	(S) 2nd Reading Indefinitely Postponed*	02/24/2009	Change of use for certain water users
SB465	LC1635	Bradley Hamlett	(S) Hearing -- (S) Taxation	03/11/2009; 8:00 AM, Rm 405	Clarify ownership of streambeds concerning property taxation
SJ7	LC1434	John Brenden	(H) Referred to Committee -- (H) Natural Resources	02/03/2009	Opposition to HR 2421

"Probably Dead" is a Bill Progress Category, and is assigned to those bills that have been voted down or missed a transmittal deadline, and to those bill drafts that have been canceled. To revive a bill that is "probably dead" typically requires a supermajority vote (usually a 2/3 vote) by the House or Senate.